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E-filed on 4/24/09

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11 Attorneys for USACM Liquidating Trust

12 **UNITED STATES BANKRUPTCY COURT**  
 13 **DISTRICT OF NEVADA**

14 In re:

15 **USA COMMERCIAL MORTGAGE**  
 16 **COMPANY,**

17 **USA CAPITAL REALTY ADVISORS,**  
 18 **LLC,**

19 **USA CAPITAL DIVERSIFIED TRUST**  
 20 **DEED FUND, LLC,**

21 **USA CAPITAL FIRST TRUST DEED**  
 22 **FUND, LLC,<sup>2</sup>**

23 **USA SECURITIES, LLC,<sup>3</sup>**

24 **Debtors.**

25 **Affects:**

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

25 Case No. BK-S-06-10725-LBR<sup>1</sup>  
 26 Case No. BK-S-06-10726-LBR<sup>1</sup>  
 27 Case No. BK-S-06-10727-LBR<sup>2</sup>  
 28 Case No. BK-S-06-10728-LBR<sup>2</sup>  
 29 Case No. BK-S-06-10729-LBR<sup>3</sup>

30 **CHAPTER 11**

31 Jointly Administered Under Case No.  
 32 BK-S-06-10725 LBR

33 **Objection of USACM Trust to Proof's**  
 34 **of Claim of Developers Capital**  
 35 **Funding, Corp. (with Certificate of**  
 36 **Service)**

37 Date of Hearing: June 12, 2009

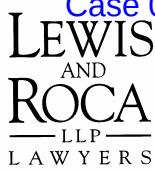
38 Time of Hearing: 9:30 a.m.

39 Pursuant to § 502 of title 11 of the United States Bankruptcy Code (the  
 40 “Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the  
 41 “Bankruptcy Rules”), USACM Liquidating Trust (the “USACM Trust”) requests that the  
 42 Court disallow Proofs of Claim No. 10725-00217 (“217”) and 10725-00224 (“224”)

43 <sup>1</sup> This bankruptcy case was closed on September 23, 2008.

44 <sup>2</sup> This bankruptcy case was closed on October 12, 2007.

45 <sup>3</sup> This bankruptcy case was closed on December 21, 2007.



1 (collectively the “Developers Capital Claims”) filed by Developers Capital Funding, Corp.  
 2 (“Developers Capital”).

3 **I. JURISDICTION**

4 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and  
 5 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
 6 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

7 The statutory predicate for the relief requested herein are 11 U.S.C. § 502 and  
 8 Bankruptcy Rule 3007.

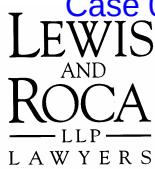
9 **II. BACKGROUND**

10 A. On April 13, 2006 (“Petition Date”), USACM, USA Securities, LLC (“USA  
 11 Securities”), USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital  
 12 Diversified Trust Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC  
 13 (“FTDF,” together with DTDF, the “Funds”) (collectively, the “Debtors”), filed voluntary  
 14 petitions for relief under chapter 11 of the Bankruptcy Code. Debtors continued to operate  
 15 their businesses, if any, as debtors-in-possession pursuant to sections 1107(a) and 1108 of  
 16 the Bankruptcy Code. Debtors’ post-petition management of the Debtors was under the  
 17 direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC  
 18 (“Mesirow”), who served as the Chief Restructuring Officer.

19 B. USACM is a Nevada corporation that, prior to the Petition Date, was in the  
 20 business of underwriting, originating, brokering, funding and servicing commercial loans  
 21 primarily secured by real estate, both on behalf of investors and for its own account.

22 C. Under the Plan, the USACM Trust is the successor to USACM with respect  
 23 to standing to seek allowance and disallowance of Claims.

24 D. The USACM Trust exists as of the Effective Date of the Plan, which was  
 25 March 12, 2007. Geoffrey L. Berman is the Trustee.



### 1      III. APPLICABLE AUTHORITY

2            A. Under the Bankruptcy Code, any claim for which a proof of claim has been  
 3 filed will be allowed unless a party in interest objects. If a party in interest objects to the  
 4 proof of claim, the Court, after notice and hearing, shall determine the amount of the claim  
 5 and shall allow the claim except to the extent that the claim is “unenforceable against the  
 6 debtor . . . under any . . . applicable law for a reason other than because such claim is  
 7 contingent or unmatured.” 11 U.S.C. § 502(b).

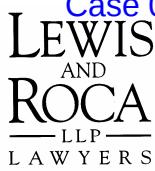
8            B. The USACM Trust is entitled to object to proofs of claim under 11 U.S.C.  
 9 § 502(a). This objection is timely under the confirmed Plan, as the deadline for such  
 10 objections has been extended to June 10, 2009, by this Court’s orders.

11            C. A properly filed proof of claim is presumed valid under Bankruptcy Rule  
 12 3001(f). However, once an objection to the proof of claim controverts the presumption,  
 13 the creditor ultimately bears the burden of persuasion as to the validity and amount of the  
 14 claim. *See Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*,  
 15 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995), *aff’d*, 91 F.3d 151 (9th Cir. 1996). The ultimate  
 16 burden of proof as to the validity of a proof of claim “remains at all times upon the  
 17 claimant.” *Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell)*, 223 F.3d 1035,  
 18 1039 (9th Cir. 2000).

### 19      IV. OBJECTION TO CLAIM

20            USACM Trust objects to the Developers Capital Claims because the Developers  
 21 Capital’s proofs of claim fail to provide sufficient documentation.

22            Bankruptcy Rule 3001(c) requires a creditor filing a proof of claim to submit  
 23 sufficient documentation with its proof of claim to support its claim. Here the Developers  
 24 Capital has filed Claim No. 217 with only a letter request to USACM for funds.  
 25 Developers Capital did not attach any supporting documentation which would provide a  
 26 basis for the request. To date, Developers Capital has not amended Claim No. 217 to



1 provide any detail or clarify whether it is even making a claim. Claim No. 217 is,  
2 therefore, not properly filed and should be disallowed.

3 Claim No. 224 filed by Developers Capital also fails to provide sufficient  
4 supporting documentation. Developers Capital merely attached a copy of a check made  
5 payable to Developers Capital by USACM. The proof of claim simply states the claim is  
6 for "services performed" and fails to provide any documentation as to the basis for which  
7 the check was issued. Accordingly, Claim No. 224 is not properly filed and should be  
8 disallowed.

9 **V. CONCLUSION**

10 The USACM Trust asks that the Court disallow Proof of Claim Nos. 10725-00217  
11 and 10725-00224 in their entirety and requests such other relief as is just and proper. The  
12 USACM Trust reserves the right to make further objections to this claim.

13 DATED: April 24, 2009.

14 LEWIS AND ROCA LLP

15  
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## 2 PROOF OF SERVICE

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Copy of the foregoing mailed by First  
Class, U.S. Mail, postage prepaid, on  
April 24, 2009, to the following parties:

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Developers Capital Funding Corp  
4500 S Lakeshore Dr Ste. 322  
Tempe, AZ 85282-7190

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/s/ Carrie Lawrence

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